



STATE OF NEW JERSEY

In the Matter of A.Z.,	:	FINAL ADMINISTRATIVE ACTION
Department of Children and Families	:	OF THE
	:	CIVIL SERVICE COMMISSION
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	:	
CSC Docket No. 2019-57	:	
	:	
	:	Request for
	:	Reconsideration
	:	

ISSUED: NOVEMBER 2, 2018 (JET)

A.Z., a County Services Specialist with the Department of Children and Families, requests reconsideration of the attached decision rendered on June 20, 2018, which found that she failed to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, in the prior matter, A.Z. argued, among other things, that C.T., an African American and an Assistant Commissioner, subjected her to a violation of the State Policy based on race; that C.T. denied her the opportunity to attend an Action Meeting despite her qualifications; that C.T. assigned an African American individual who was less qualified to participate at the Action Meeting; that C.T. referred to K.C., a Caucasian employee, as Black; that A.Z. was offended at the time she overheard the comments C.T. made to K.C.; that C.T. treats Caucasian and Hispanic employees differently from African American staff; and that C.T. questioned A.Z.'s medical illness. The Office of Equal Employment Opportunity and Affirmative Action (EEO/AA) conducted an investigation and a violation of the State Policy was not substantiated. A.Z. appealed and the Civil Service Commission (Commission) upheld that there was no violation of the State Policy. *See In the Matter of A.Z., Department of Children and Families* (CSC, decided June 20, 2018). Additionally, in that decision, A.Z. was advised that, as a supervisor, she had a duty to report any observed violations of the State Policy.

On reconsideration, A.Z. asserts that clear material errors occurred in the prior decision, false information was documented against her, and the State Policy

was not properly enforced. Specifically, she contends that the Commission falsely accused her of failing to act as a supervisor. In addition, A.Z. states that, although two workers in her unit, M.T.D. and C.R.T., inquired about why C.T. did not select them to serve at the Action Meeting, the prior decision erroneously indicated that the two workers in her unit inquired if their non-selection was based on race. In this regard, A.Z. explains that she did not specifically report that M.T.D.'s and C.R.T.'s inquiries were based on race, and neither employee expressed concerns that they were discriminated against. Rather, she maintains that she only reported that C.R.T. and M.T.D. are Caucasian for reference purposes. A.Z. adds that, since she did not allege a violation of the State Policy pertaining to those employees, she should not have been reprimanded in the prior decision with respect to her duty as a supervisor to report alleged violations of the State Policy. As such, A.Z. explains that she was unfairly required to participate in a training as a result of the reprimand, which appears to have been retaliatory in nature. As such, A.Z. maintains that the prior decision falsified the information that she provided. Moreover, A.Z. requests the Commission to issue a new decision removing the incorrect information from her record.

Additionally, A.Z. maintains that it was documented in the EEO/AA's January 22, 2018 determination that C.T. admitted to making inappropriate comments about K.C., a Caucasian employee. Specifically, the January 22, 2018 EEO/AA determination letter determined that C.T. admitted to telling K.C. that she considers her to be Black based on her marriage to an African American man. A.Z. states that, as a Caucasian employee, she found the statement was unacceptable and derogatory, it communicated C.T.'s feelings pertaining to race to other employees. A.Z. adds that, regardless of C.T.'s intent, her statement was demeaning and constitutes a direct violation of the State Policy.

A.Z. asserts that, although the prior decision found that K.C. did not file a discrimination complaint, the State Policy does not require the individual who was subjected to such behavior to file such a complaint. Rather, A.Z. contends that C.T.'s comments to K.C. violated the State Policy based on third party harassment since she overheard and was offended by C.T.'s comments. A.Z. maintains that C.T.'s statement constitutes an unwanted nickname and a joke as K.C. is married to an African American man. She adds that C.T. made the statement to several employees, and A.Z. found that offensive as it appeared the meaning was that there was something wrong with her being white. In this regard, A.Z. questions how C.T.'s comment was not found as offensive, as it undermined the integrity of the workplace and working relationship with C.T. A.Z. explains that C.T.'s statement could be clearly interpreted to mean that since K.C. is Caucasian, and not African American or married to an African American man, that she was not considered as acceptable to C.T. A.Z. adds that C.T.'s statement implied that she did not consider Caucasian employees as acceptable. A.Z. maintains that she observed C.T.'s

discriminatory behavior in her actions in the workplace, which interfered with productivity and hampered morale in the workplace.

A.Z. reiterates that the prior decision made it appear that she failed to act as a supervisor. She contends that the State Policy does not require individuals to make a report of alleged discrimination, but rather, it only encourages them to report incidents to the EEO or a supervisor. A.Z. adds that none of the other supervisors in her unit were required to take the refresher training, and it was the second refresher training she was required to complete in less than a year. A.Z. argues that she attended an EEO/AA refresher course, and the trainers discussed a similar incident where an African American employee was called white. A.Z. maintains that the trainers confirmed that the incident constituted third party harassment under the State Policy.

Moreover, A.Z. states that although she reported C.T.'s inappropriate comment as a part of her supervisory responsibility, the prior decision found that such behavior was acceptable.¹ Finally, A.Z. maintains that the EEO/AA's and the prior decision's findings are at odds with the State Policy. In this regard, she argues that the prior decision indicates that it is acceptable for individuals to engage in similar behavior towards others with respect to inappropriate racial statements made toward employees. A.Z. adds that a zero-tolerance policy would not deem it permissible for C.T., who is an African American Assistant Commissioner, to say that a Caucasian employee is "okay" as she considers that employee to be African American by marriage.

In response, the EEO/AA asserts that A.Z. has presented no new information or evidence that would change the outcome of the prior decision. The EEO/AA contends that A.Z.'s initial allegation indicated that C.T. stated, "It's okay, I consider [K.C.] to be Black." The EEO/AA adds that when A.Z. was interviewed at the time of the investigation, she indicated that C.T. stated, "[K.C.] is Black." The EEO/AA contends that it interviewed C.T., and she reported that the incident occurred prior to when she worked with A.Z. in the Division of Women. C.T. also indicated that she stated, "[K.C.] is not White, she's Black." The EEO/AA maintains that, as it previously indicated in its January 22, 2018 determination, neither A.Z.'s nor C.T.'s version of events were demeaning based on race in violation of the State Policy. Moreover, the EEO/AA maintains that A.Z. did not meet her burden of proof.

In response, A.Z. states that the information the EEO/AA submits in this matter is different from what was indicated in its initial determination letter.

¹ A.Z. notes that she requested reassignments in 2016, 2017, and 2018 so she was not required to work with C.T., but her requests were ignored by the Office of Human Resources. She adds that K.C. was reassigned in 2016.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. It is noted that the burden of proof is on the appellant to provide information in support of her case. *See N.J.S.A.* 11A:2-6(b) and *N.J.A.C.* 4A:2-1.4(c).

In this matter, A.Z. did not present any new evidence or information to show that a clear material error occurred and failed to present any additional information which would change the outcome of the case. Additionally, as will be discussed more fully below, the prior decision did not document false information against her. As indicated in the prior decision, the witnesses and evidence did not confirm that A.Z. was subject to discrimination based on race, and there was no substantive evidence to show that C.T. violated the State Policy. Moreover, A.Z.'s arguments in this matter are not sufficient to change the outcome of the prior decision.

With regard to A.Z.'s argument that she did not allege that two Caucasian employees in her unit, M.T.D. and C.R.T., were discriminated against based on race, but rather, only referenced that they were Caucasian, which did not implicate the State Policy, the Commission disagrees. Although A.Z. argues that she only reported that two employees in her unit questioned why C.T. did not select them to participate at the Action Meeting and she only mentioned as a reference that both employees are Caucasian, such information does not establish that the reference did not invoke the State Policy. In this regard, the Commission cannot fathom any other reason that A.Z. would mention that M.T.D. and C.R.T. are Caucasian other than to suggest that they were discriminated against based on race. Moreover, A.Z. alleged in her complaint that C.T. treated Caucasian individuals differently from African American individuals. As such, it can be reasonably concluded that A.Z. was at least implicitly suggesting that M.T.D. and C.R.T. were treated differently by C.T. based on race. The Commission is satisfied that A.Z.'s reference that the two employees are Caucasian implicates **A.Z.'s belief** that they were discriminated against based on race. In other words, the reference that the two employees were Caucasian, in connection with her EEO/AA complaint, clearly invokes the protected categories of the State Policy based on race. *See N.J.A.C.* 4A:7-3.1(a). Accordingly, the Commission finds that the prior decision was not in error.

With respect to A.Z.'s argument that she was improperly reprimanded in the prior matter pertaining to what she was expected to report in her supervisory capacity to the EEO/AA, the Commission disagrees. Initially, the language in the prior decision pertaining to what A.Z. was expected to report in her supervisory capacity was not punitive in nature. Rather, it only served as an instruction from

the Commission regarding what she was expected to report to the EEO/AA should she be involved with any alleged State Policy violation matters in the future. Additionally, the Commission did not recommend any action against her in the prior matter. Although A.Z. attended a refresher training regarding the State Policy, the training does not constitute disciplinary action or subject her to retaliation. Such trainings are non-disciplinary in nature and only serve to train employees regarding the State Policy. Moreover, an appointing authority, in its discretion, has the authority to have any employee undergo training or retraining.

Additionally, *N.J.A.C.* 4A:7-3.1(a)2 specifically provides that third party harassment is unwelcome behavior of a sexual, racial or derogatory nature regarding any protected category, that is not directed at an individual but is a part of that individual's work environment. Third party harassment is prohibited based upon any of the aforementioned protected categories listed in *N.J.A.C.* 4A:7-3.1(a). With respect to A.Z.'s argument that she was subjected to third party harassment, her arguments are misplaced. Although A.Z. may have been offended by C.T.'s comment, as discussed more fully below, such information is not enough, in and of itself, to substantiate that she was subjected to third party harassment. In the prior matter, there was no substantive evidence to show that C.T.'s comment constituted a violation of the State Policy, and A.Z. has provided no substantive evidence in this matter to show that she was subjected to derogatory behavior as a part of her work environment.

Upon review of the record, there is some dispute in the record pertaining to what was actually stated by C.T. to K.C. at the time of the alleged incident. In this regard, A.Z. contends in this matter that she overheard C.T. state to K.C. that she considers her to be Black. However, the EEO/AA contends that A.Z. initially reported that C.T. stated, "It's okay, I consider K.C. to be Black" and she later reported at the time of the interview that C.T. stated, "K.C. is Black." Additionally, the EEO/AA contends that C.T. explained that she stated, "K.C. is not White, she's Black." Upon review of all the aforementioned statements, the Commission finds that none of the statements constitute third party harassment. Although A.Z. was offended, the comment was not racially discriminatory in nature and does not, in and of itself, violate any of the protected categories of the State Policy, as C.T.'s reference to K.C. as Black was not derogatory and does not constitute an unwelcome nick name. As noted in the prior decision, the incident was investigated by the EEO/AA and there was no corroboration that C.T. had any inappropriate racial motivation for making the comment. With respect to A.Z.'s argument that the State Policy did not require K.C. to file an EEO/AA complaint against C.T., such information, if investigated by the EEO/AA and presented to the Commission by way of an appeal, may have corroborated A.Z.'s version of events. However, as noted in the prior decision, there is no evidence that K.C. filed a discrimination complaint. With respect to A.Z.'s argument regarding a hypothetical situation presented at a State Policy refresher course that was similar to the allegations

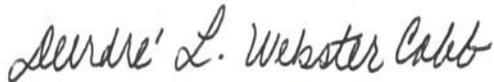
presented in this matter, such information does not establish her claims. Discrimination appeals are reviewed on a case by case basis and it is the Commission that makes the final determination in such matters. Although A.Z. correctly states that the State Policy is a zero tolerance policy, the prior decision does not confirm that it is acceptable for individuals to engage in unacceptable behavior in violation of the State Policy. Rather, an investigation was conducted and there was no finding of a violation of the State Policy. Accordingly, A.Z. has failed to present a sufficient basis for reconsideration of the Commission's prior decision.

ORDER

Therefore, it is ordered that this request be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 31st DAY OF OCTOBER, 2018



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